

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
ISLAND COUNTY TO MEL MILBY

CONCERNED CITIZENS OF SOUTH
WHIDBEY, ROBERT A. WINDECKER,

Appellants,

v.

ISLAND COUNTY AND MEL MILBY,

Respondents.

SHB No. 77-11

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a shoreline substantial development permit, came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Robert E. Beaty, Rodney Kerslake, and David Akana (presiding), at a hearing in Coupeville, Washington on January 22 and 23, 1979.

Appellants were represented by their attorney, Janet E. Quimby; respondent County was represented by Alan R. Hancock, Deputy Prosecuting Attorney; respondent permittee was represented by his attorney,

DA/RK/LB

1 Richard R. Wilson.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, and the Board having
4 issued its Proposed decision and having received exceptions to its
5 Proposed Findings of Fact, Conclusions of Law and Order from respondent
6 Milby, and reply to these exceptions by appellants, and the Board having
7 granted the exceptions in part and denying same in part, the Board
8 now makes these

9 FINDINGS OF FACT

10 I

11 The subject substantial development permit is for construction
12 of storm water drainage facilities for a residential subdivision known
13 as Useless Bay Shores Division 1 on the shorelines of Useless Bay on
14 Whidbey Island, Island County. The subdivision contains thirty-nine lots
15 on about 17 acres of property. Two thousand two hundred feet of roadway
16 and some impervious areas on the various lots will be the major source
17 of runoff water. The permittee's plan is to collect storm water along
18 the roadway edge and route it to a centralized location between lots
19 eight and nine, through an oil/water separator, and transport it over a
20 bluff to the shoreline by two four-inch drainage lines, a primary and
21 a secondary outlet. A catch basin at the base of the bluff will be
22 designed to absorb the energy of the water and disperse it over a
23 portion of the shoreline.

24 II

25 The shoreline of Useless Bay lies along the bluff on the west
26 side of the instant property. The bluff varies in height from 105
27 feet above mean sea level at the southern end to 60 feet at the northern

1 end of the site. The subdivision upon which lots are to be created is
2 located on top of the bluff. Underlying the site are various thicknesses
3 of top soil, a relatively impermeable layer of material known as Vashon
4 Till, and a relatively more permeable layer of material known as
5 Whidbey Till. The Vashon Till rises as close as 12 inches to the
6 ground surface and is unsatisfactory material for a septic system.
7 As a result, certain areas of the site may be found to be unbuildable
8 presently because of shallow Vashon Till. Ground water from rainfall and
9 septic systems may perch on certain areas of the Vashon Till, but the
10 ground water flow is probably moving generally north, parallel to the base
11 of the bluff rather than to the face of the bluff. Consequently, large
12 seepage at the face of the bluff will not be likely. It follows that the
13 impact of seepage and drainage from and on the site to the bluff should
14 not be significant, and natural sloughing of the bluff should continue
15 unaffected at a rate of about two inches per year until the slope of
16 the bluff reaches an angle of repose of approximately 35°.

17 At the base of the bluff there is evidence of some wave erosion at the
18 extreme southern end of the site for a distance of about 200 feet on
19 property owned by the permittee, Milby, but not a part of the subject
20 subdivision. There is also evidence of slow creep on the colluvium along
21 the toe of the bluff over the entire site. The shoreline otherwise appears
22 in a state of equilibrium.

23 III

24 The drawing attached to the permit simply depicts piping, catch
25 basins, and two four-inch PVC pipes over and along the slope of a
26 bluff. The permit, issued by Island County to Mel Milby on March 21

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1 1977, was appealed to this Board. Pursuant to an agreement by the
2 parties, further proceedings before the Board were continued during
3 which time the County was to prepare a draft and final Environmental
4 impact statement (EIS), limited in scope by agreement, and to thereafter
5 reevaluate the permit. After the preparation of the EIS and reconsider-
6 ation of the permit, the County, on October 16, 1978, reaffirmed its
7 earlier action and the appellants continued their appeal.

8 IV

9 On its reconsideration, the permit was not modified by the County,
10 although studies made by the permittee and reviewed by the County's
11 planning department contemplated two drainage pipes, eight-inch
12 diameter if PVC or ten-inch diameter if corrugated steel. The pipes
13 were sized on the basis of a ten-year frequency storm. Also contemplat-
14 ed though not a condition or provision of the permit, are properly sized
15 filtering systems to control pollution levels, interception of seepage
16 from septic systems off the surface of the glacial till, if any should
17 occur at the face of the bluff, and a viable maintenance and operational
18 plan for the drainage system.

19 V

20 The final and draft EIS address beach and bluff stability.
21 The discussions therein were not shown to be in error.

22 The EIS also clarifies the acreages involved: 17 acres
23 on the upland for the subdivision, 3.4 acres on the bluff, and 2.8 acres
24 of lowlands. Because of roads and the utility path, the total lot
25 area would not be equal to the number of lots divided into the
26 subdivision acreage. Appellants' contention that the total lot area

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1 should be equal to the total area is thus not well founded.

2 The EIS, including discussion in the alternative section, was not
3 shown to be defective in any other respect.

4 VI

5 Appellants failed to show any adverse effects from the storm
6 drainage system upon fish and wildlife in the shoreline.

7 VII

8 The substantial development lies within two shoreline environment
9 designations: the bluff and lowland areas are within the conservancy
10 designation; the upland areas are within a shoreline residential
11 classification.

12 VIII

13 The approved and adopted Island County Master Program (ICMP)
14 provides that the purpose of a conservancy environment is to protect,
15 conserve, and manage, among other things, harvestable natural
16 resources, ecological areas, and recreational areas in order to
17 achieve a continuous flow of sustained yield resource utilization.

18 IX

19 The ICMP requires that pollution and erosion from surface runoff
20 water generated in residential subdivisions be prevented. Chapter 16.21.
21 100(b)(3).

22 Utilities installed on beaches or tidal areas must be located,
23 designed, constructed, and operated so as to prevent or minimize the
24 degradation of water quality, marine life and the general ecosystem.
25 Chapter 16.21.130(b)(3 and 5). Utilities are prohibited in areas subject
26 to geologic hazards unless it is clearly shown that such hazards can be

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1 overcome. Chapter 16.21.130(b)(7).

2 X

3 Any Conclusion of Law which should be deemed a Finding of Fact is
4 hereby adopted as such.

5 From these Findings the Board comes to these

6 CONCLUSIONS OF LAW

7 I

8 The instant substantial development is evaluated for consistency
9 with the adopted and approved master program and the provisions of
10 the Shoreline Management Act. RCW 90.58.140(2)(b).

11 II

12 The policy of the Act "contemplates protecting against adverse
13 effects to the public health, the land and its vegetation and wildlife,
14 and the waters of the state and their aquatic life" To
15 implement this policy on natural shorelines, "uses shall be preferred
16 which are consistent with control of pollution and prevention of
17 damage to the natural environment,". Uses which are permitted in
18 the shorelines "shall be designed and conducted in a manner to
19 minimize, insofar as practical, any resultant damage to the ecology
20 and environment of the shoreline area". RCW 90.58.020. The
21 proposed development cannot be evaluated for consistency with the foregoin
22 quoted provisions or the pertinent master program provisions.

23 The proposed storm drainage system has not reached a stage in its
24 design plans at which this Board can adequately evaluate the permit. The
25 Board notes that while the permit was issued by respondent County for
26 two (2) four-inch drain lines to transport drainage over the bluff, the

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1 final EIS issued by the County and the testimony before this Board
2 indicated that two (2) eight inch PVC or two (2) ten inch corrugated
3 steel pipes were now contemplated to carry storm drainage from the proposed
4 plat over the bank and onto the shores of Useless Bay. A further
5 indication of the indefiniteness of the drainage outfall design is
6 evidenced by the fact that the county engineer's last comment contained in
7 the final EIS states in part ". . . we are unable to verify the
8 acceptability of the design." In addition, the county commissioners, in
9 reaffirming the issuance of the permit, imposed a condition to the permit
10 to the effect that the final design of the outfall was subject to the
11 approval of the Board of County Commissioners. This Board would also like
12 to review the final storm drainage system design which would include, at a
13 minimum, the features described in Finding of Fact IV.

14 The adequacy of design of the storm drain outfall and drainage
15 system is of critical importance in this instance; the outfall is
16 proposed to traverse a steep bluff area, and failure of the system could
17 lead to serious erosion problems on this bluff and possible slope
18 failure, thus adversely affecting the shoreline environment and
19 potentially the safety of the homes to be constructed on top of the
20 bank. A development of sub-urban density, such as this, should incorporat
21 standards which are appropriate to such density. Two major issues
22 regarding the storm drainage system cause serious concern to this Board:

- 23 1. The design capacity of the system and,
- 24 2. The maintenance and operation of the drainage system.

25 First, in regard to the design capacity of the system, it appears
26 to this Board that a 10-year storm design criterion
27 for a steep slope outfall, where the results of system

1 failure could have serious consequences in terms of environmental,
2 property and life endangerment, is inadequate for the instant site.
3 The Board does not wish to become involved in the design of a storm
4 drainage system and recognizes that such design is a matter of
5 engineering concern. However, the Board recommends that in this
6 instance a storm of greater magnitude than a 10-year frequency should
7 be utilized as the design criterion.

8 Second, there is some question as to the maintenance and operation
9 of the drainage system, especially the "over-the-bluff" outfall.
10 Testimony before this Board indicated that maintenance and operation
11 of the storm sewer outfall would be left up to a homeowners' association.
12 Either the county should assume responsibility for the operation
13 and maintenance of the drainage system, including the storm sewer
14 outfall, or a definite maintenance and operation plan should be
15 required by the permit which unequivocally demonstrates an adequate
16 ability and means for maintaining such system and an acceptable response
17 capability in case of system failure.

18 The concept proposed by respondents appears to be viable; appellants
19 have not shown otherwise. However, the drainage system analysis
20 offered by respondents is unconvincing in view of the risks from
21 the proposal to the shoreline which is inherent in the instant eroding
22 bluff. At a minimum, the analysis offered in support of a specific design
23 should be consistent with the substantial development described in the
24 permit and application. See WAC 173-14-110.

25 III

26 Appellants did not prove any violation of the State Environmental
27 FINAL FINDINGS OF FACT,
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1 Policy Act, chapter 43.21C.

2 IV

3 The permit should be remanded for further proceedings consistent
4 herewith.

5 V

6 Any Finding of Fact which should be deemed a Conclusion of Law
7 is hereby adopted as such.

8 From these Conclusions the Board enters this


9 ORDER


10 The substantial development permit issued by Island County to
11 Mel Milby is remanded for further proceedings consistent herewith.

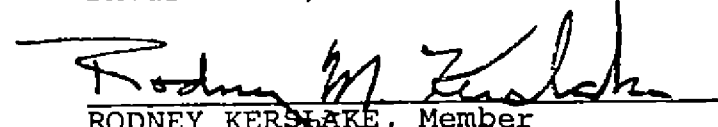
12 DATED this 3^d day of May, 1979.

3 SHOVELINES HEARINGS BOARD

14 
15 DAVE J. MOONEY, Chairman

16 
17 CHRIS SMITH, Member

18 
19 DAVID AKANA, Member

20 
21 RODNEY KERSLAKE, Member

22 
23 ROBERT E. BEATY, Member

24
25
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